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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 24, 2001

PETITION OF

US LEC OF VIRGINIA, LLC

CASE NO. PUC010194

For Declaratory Judgment
Interpreting and Enforcing
Interconnection Agreement
with Verizon Virginia Inc.

FINAL ORDER

On September 13, 2001, US LEC of Virginia, LLC ("US LEC") filed with the State Corporation Commission ("Commission") a petition for declaratory judgment against Verizon Virginia Inc. ("Verizon Virginia") seeking enforcement of a certain interconnection agreement between US LEC and Verizon Virginia (the "Agreement"), which is based upon US LEC's adoption, pursuant to Section 252(i) of the Telecommunications Act of 1996 ("the Act"), of an interconnection agreement between Verizon Virginia and MCImetro Access Transmission Services, Inc. ("MCIIm") (the "MCIIm Agreement").¹ Specifically, US LEC seeks interpretation and enforcement of the Agreement and its terms

¹ The interconnection agreement by and between Verizon and MCImetro Access Transmission Services, Inc. was approved by this Commission in Petition of MCI Telecommunications Corporation and MCI Metro Access Transmission Services of Virginia, Inc., For arbitration of unresolved issues with Bell Atlantic-Virginia, Inc., pursuant to § 252 of the Telecommunications Act of 1996, Case No. PUC960113, 1997 S.C.C. Ann. Rep. 236.

relating to the payment of reciprocal compensation for their transport and termination of Verizon Virginia's traffic to Internet Service Providers ("ISPs").

US LEC contends that Verizon Virginia will not make payments to US LEC for reciprocal compensation for the transport and termination of telephone exchange service traffic handed off by Verizon Virginia to US LEC for termination by US LEC to its exchange service end users that are ISPs or Enhanced Service Providers (collectively "ISPs"). US LEC relies upon the adopted MCIm agreement's requirement that the parties will pay such compensation for the transport and termination of "Local Traffic." Furthermore, US LEC requests that the Commission enter an order affirming an earlier Commission decision that calls to ISPs are local for purposes of reciprocal compensation.²

Finally, US LEC contends that a Commission order will not be impacted by the Federal Communications Commission's ("FCC") recent reevaluation of the treatment to be accorded to traffic delivered to ISPs.³ The FCC has stated that its determination

² Petition of Cox Virginia Telecom, Inc., For enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers ("Petition of Cox Virginia Telecom, Inc."), Case No. PUC970069, 1997 S.C.C. Ann. Rep. 298.

³ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, 16 F.C.C.R. 9151 (2001) (the "ISP Remand Order").

does not "alter existing contractual obligations," and "does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here."⁴

In Petition of Cox Virginia Telecom, Inc.,⁵ Cox Virginia Telecom, Inc. ("Cox"), in its petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA"), presented the issue of payment of reciprocal compensation for its transport and termination of BA-VA traffic to ISPs served by Cox. We found in that case that calls to ISPs as described in the Cox petition constituted local traffic and that both Cox and BA-VA were entitled to reciprocal compensation for the termination of this type of call. We found that calls to an ISP dialed on a seven-digit basis were local in nature.

However, subsequent decisions have been issued by the FCC concerning reciprocal compensation for ISP-bound traffic⁶ and the treatment of Internet-bound traffic as interstate in nature.⁷

⁴ Id. at Para. 82.

⁵ Petition of Cox Virginia Telecom, Inc., Case No. PUC970069, 1997 S.C.C. Ann. Rep. 298.

⁶ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, CC Dockets 96-98 and 99-68, FCC 99-38, 14 F.C.C.R. 3689 (1999) (hereinafter, "Reciprocal Compensation Order").

⁷ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound

The Commission remains steadfast in its concern regarding the possibility of conflicting results by this Commission and the FCC.⁸ The FCC has still not reached determinations on the various outstanding issues concerning its treatment of ISP-bound traffic. Both parties in this case are seeking an expedited decision. Rather than prolong the resolution of the issues involved in this case, the most practical action is for this Commission to decline jurisdiction and allow the parties to present their case to the FCC.⁹

The Commission is a constitutional agency that derives all of its powers and authority from the Constitution of Virginia and properly enacted legislative measures. A statement by the FCC does not, per se, grant jurisdiction to this Commission.

Traffic, Order on Remand and Report & Order, FCC No. 01-131, 16 F.C.C.R. 9151 (2001) ("Order on Remand").

⁸ Petition of Starpower Communications, LLC, For declaratory judgment and enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc., Case No. PUC990156, 2000 S.C.C. Ann. Rep. 272; Petition of Starpower Communications, LLC, For declaratory judgment interpreting interconnection agreement with GTE South, Inc., Case No. PUC990023; and Petition of Cox Virginia Telecom, Inc. v. GTE South Incorporated, For enforcement of interconnection agreement for reciprocal compensation for the termination of local calls to Internet Service Providers, Case No. PUC990046, 2000 S.C.C. Ann. Rep. 263.

⁹ Furthermore, if interpretation of this interconnection agreement requires action under § 252(e) of the Act, the Commission would decline to waive sovereign immunity under the Eleventh Amendment of the Constitution of the United States. See Application of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, and MediaOne Telecommunications of Virginia, Inc., For arbitration of interconnection rates, terms and conditions, and related arrangements with Verizon Virginia Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. PUC000282, 2000 S.C.C. Ann. Rep. 368.

Thus, even if we could respond to the petition in a manner not inconsistent with rules the FCC may later adopt, our ruling might be challenged on jurisdictional grounds by a party dissatisfied with the outcome.

NOW THE COMMISSION, upon full consideration of the pleadings, the Act, the Reciprocal Compensation Order, the Order on Remand, and the applicable statutes and rules, finds that we should take no action on the petition. We will dismiss the petition without prejudice and encourage the parties to request interpretation of this Agreement from the FCC.

Accordingly, IT IS THEREFORE ORDERED that the petition in Case No. PUC010194 be DISMISSED and, there being nothing further to come before the Commission, the papers transferred to the files for ended causes.